

SUPER LAW GROUP, LLC

December 1, 2017

Via Certified Mail, Return Receipt Requested

Boro Transit Inc.
691 Zerega Avenue
Bronx, NY 10473

Consolidated Bus Transit, Inc.
691 Zerega Avenue
Bronx, NY 10473

Jodi Genovese
50 Snediker Avenue
Brooklyn, NY 11207

Re: Notice of Violation and Intent to File Suit under the Clean Water Act

To Whom It May Concern,

We are writing on behalf of Riverkeeper, Inc.,¹ ("Riverkeeper") to notify you of their intent to file suit against Consolidated Bus Transit, Inc., and Boro Transit Inc., (collectively, "Consolidated Bus") pursuant to Section 505(a) of the Federal Clean Water Act ("CWA")² for violations of the CWA.

Riverkeeper intends to file suit, as an organization and on behalf of their adversely affected members, in the United States District Court for the Southern District of New York seeking appropriate equitable relief, civil penalties, and other relief no earlier than 60 days from the postmark date of this letter.³

Riverkeeper intends to take legal action because Consolidated Bus is discharging polluted stormwater from Consolidated Bus's transportation facility at 691 Zerega Ave, Bronx, NY 10473 ("the Facility") to the waters of the United States without a permit in violation of Sections 301(a)

¹ Riverkeeper, Inc. is a not-for-profit environmental organization existing under the laws of the state of New York, headquartered in Ossining, New York. Riverkeeper's mission includes safeguarding the environmental, recreational and commercial integrity of the Hudson River and its ecosystem, as well as the watersheds that provide New York City with its drinking water. Riverkeeper was originally founded by the Hudson River Fisherman's Association, a group of fishermen concerned about the ecological state of the Hudson River, and the effect of its polluted and degraded condition on fish. Riverkeeper achieves its mission through public education, advocacy for sound public policies and participation in legal and administrative forums. Riverkeeper has more than 7,500 members, many of whom reside near to, use and enjoy the Hudson River and the waters and tributaries of New York Harbor, including Newtown Creek, Coney Island Creek, Jamaica Bay, and the Gowanus Canal; waters that are polluted by industrial stormwater runoff.

² 33 U.S.C. § 1365(a). We refer to statutory provisions by their section in the Clean Water Act and provide the parallel citation to the United States Code only on first reference.

³ See 40 C.F.R. § 135.2(a)(3)(c) (notice of intent to file suit is deemed to have been served on the postmark date).

and 402(p)(2)(B) of the Clean Water Act.⁴ Further, Consolidated Bus has not applied for coverage under, nor complied with the conditions of, an individual National Pollutant Discharge Elimination System ("NPDES") permit or the General Permit for the Discharge of Stormwater Associated with Industrial Activity ("General Permit")⁵ issued by the New York State Department of Environmental Conservation ("DEC"), in violation of Sections 402(p) and 40 C.F.R. §§ 122.26(c)(1) and (e)(1).

I.

BACKGROUND

With every rainfall event, hundreds of millions of gallons of polluted rainwater pour into New York Harbor, Long Island Sound, and other receiving waters. The consensus among agencies and water quality specialists is that stormwater⁶ pollution accounts for more than half of the total pollution entering the marine environment each year.

DEC has designated more than 7,000 river miles, 319,000 acres of larger waterbodies, 940 square miles of bays and estuaries, and 592 miles of Great Lakes shoreline in the State as "impaired," or not meeting water quality standards, and unable to support beneficial uses such as fish habitat and water contact recreation.⁷ For the overwhelming majority of water bodies listed as impaired, stormwater runoff is cited as a primary source of the pollutants causing the impairment. Contaminated stormwater discharges can and must be controlled in order to improve the quality and health of these waterbodies.

Stormwater discharges flow from the Facility into directly into Westchester Creek. DEC has classified Westchester Creek as a class "I" waterbody.⁸ Under New York's Water Quality Standards, a waterbody that is designated as "I" is best suited for secondary contact recreation and fishing uses.⁹ "I" waters should be suitable for fish, shellfish, and wildlife propagation and survival. In addition, "I" waters shall be suitable for primary contact recreation. The New York Water Quality Standards also set numeric and narrative criteria for different water pollution parameters including dissolved oxygen, oil and grease, suspended and settleable solids, bacteria

⁴ 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).

⁵ New York State Department of Environmental Conservation, *SPDES Multi-Sector General Permit For Stormwater Discharges Associated With Industrial Activity*, Permit No. GP-0-12-001, (hereinafter "General Permit"), available at <http://www.dec.ny.gov/chemical/9009.html> (last visited Jan. 24, 2013). This General Permit replaces earlier general permits for the discharge of stormwater associated with industrial activity. It became effective on October 1, 2012, and will expire on September 30, 2017.

⁶ Stormwater is water from precipitation events that flows across the ground and pavement after it rains or after snow and ice melt. See 40 C.F.R. § 122.26(b)(13).

⁷ See EPA, Watershed Assessment, Tracking and Environmental Results, New York Assessment Data for 2012, http://ofmpub.epa.gov/waters10/attains_state.report_control?p_state=NY&p_cycle=2012&p_report_type=A (last visited Oct. 14, 2014).

⁸ See 6 N.Y.C.R.R. § 935.6.

⁹ See 6 N.Y.C.R.R. § 701.13.

(pathogens), pH, temperature, nutrients, and others. A waterbody must meet these numeric and narrative criteria in order to support its designated uses.¹⁰

Westchester Creek consistently fails to meet state water quality standards; stormwater discharges from this Facility contribute to this failure.¹¹ In the past, DEC has designated Westchester Creek as impaired pursuant to Section 303(d) of the CWA¹² for failure to meet minimum water quality standards due to high oxygen demand (low levels of dissolved oxygen).¹³ While the Creek has been removed from the list of waterbodies for which a Total Maximum Daily Load ("TMDL") must be developed, the degraded water quality conditions that led to the impaired listing have not been addressed.¹⁴

Stormwater discharges from the Facility introduced a host of industrial pollutants into Westchester Creek. The CWA provides a regulatory regime for mitigating the worst impacts of industrial stormwater pollution, but Consolidated Bus is not in compliance with the basic requirements of that regime.

II.

STANDARDS AND LIMITATIONS ALLEGED TO HAVE BEEN VIOLATED AND ACTIVITIES ALLEGED TO BE VIOLATIONS

A. Consolidated Bus Is Discharging Stormwater Associated with Industrial Activity to Waters of the United States without a Permit.

The CWA prohibits the discharge of pollutants to the waters of the United States except in accordance with a valid NPDES permit.¹⁵ Consolidated Bus's industrial activity at the Facility has caused and continues to cause a "discharge of pollutants" within the meaning of Section 502(12) of the CWA¹⁶ and a "stormwater discharge associated with industrial activity" within the meaning of 40 C.F.R. § 122.26(b)(14) from the Facility on at least each and every day that there has been a rain event of more than 0.1 inches.¹⁷

¹⁰ See 6 N.Y.C.R.R. §§ 702, 703.

¹¹ See *Final New York State 2016 Section 303(d) List of Impaired Waters Requiring a TMDL/Other Strategy*, available at http://www.dec.ny.gov/docs/water_pdf/303dListfinal2016.pdf (hereinafter "303(d) List") at 33.

¹² 33 U.S.C. § 1313(d).

¹³ See 303(d) List at 33.

¹⁴ Westchester Creek is not included on the section 303(d) list, but is included on a list of other impaired waters for which no Total Maximum Daily Load ("TMDL") will be prepared. A TMDL is not necessary because other required control measures are expected to result in restoration in a reasonable period of time. Specifically, Westchester Creek pollution is being addressed through the CSO Consent Order to meet pathogen standards. See 303(d) List at 33.

¹⁵ See CWA §§ 301(a), 402.

¹⁶ 33 U.S.C. § 1362(12).

¹⁷ EPA has determined that precipitation greater than 0.1 inches in a 24-hour period constitutes a measurable precipitation event for the purposes of evaluating stormwater runoff associated with industrial activity. See, e.g., 40 C.F.R. § 122.26(c)(1)(E)(6) (using 0.1 inches as the distinguishing threshold of a storm event).

The Facility has exposed and continues to expose industrial pollutants to stormwater, at a minimum, by (a) maintaining buses and other vehicles onsite and storing such vehicles outside or otherwise exposing them to the elements, and (b) from vehicles entering and leaving the Facility that track pollutants off site. During precipitation events (including runoff from rainfall and snow or ice melt events), pollutants are carried in runoff from the Facility directly into Westchester Creek.

Consolidated Bus's activities at the Facility include but are not limited to the fueling, maintenance and storage of passenger buses and other vehicles. In particular, Consolidated Bus fuels buses from a large, uncovered fuel tank at the facility. This activity is conducted outdoors. In carrying out these activities, Consolidated Bus stores and handles materials in a manner that exposes pollutants to precipitation and snowmelt. The stormwater then discharged into Westchester Creek from this facility can carry solids that suspend or dissolve in stormwater, heavy metals, hydraulic fluids, hydrocarbons, and other pollutants.¹⁸

Much of the Facility is paved and sits directly on the banks of Westchester Creek. Riverkeeper believes that the Facility is in a direct drainage area where all the stormwater that drains off the site flows directly into Westchester Creek. The stormwater discharged at the Facility is associated with industrial activity and contains debris, suspended solids, and other pollutants.

Buses, trucks and other vehicles driving on and off the property are also point sources of pollution. Vehicles and industrial equipment at the Facility may expose many other pollutants to the elements, including gasoline, diesel fuel, anti-freeze, and hydraulic fluids.

All of these pollution sources are exposed to precipitation and snowmelt. These pollution sources also may release fuel, oil, lubricants, PCBs, PAHs, an array of metals, pH-affecting substances and chemical residues. These toxic pollutants are often generated in the form of small particulate matter, which settles on the ground and other surfaces that are exposed to stormwater and non-stormwater flows.

Because Consolidated Bus fails to adequately shelter and otherwise contain these materials to prevent their release to the environment, precipitation falls on and flows over exposed materials, fluids, and particulates. Polluted stormwater discharges flow into Westchester Creek. Further, vehicles from the Facility track dust, particulate matter, and other contaminants to areas on and off the premises from which these pollutants can enter the stormwater system and, ultimately, Long Island Sound and the New York Harbor.

Westchester Creek is a "water[] of the United States," as defined in 40 C.F.R. § 122.2 and, therefore, part of the "navigable waters" as defined in Section 502(7) of the CWA. Consolidated Bus does not have a NPDES permit for these discharges of pollutants. Thus, Consolidated Bus is

¹⁸ See EPA, "Industrial Stormwater Fact Sheet Series, Sector P: Motor Freight Transportation Facilities, Passenger Transportation Facilities, Petroleum Bulk Oil Stations and Terminals, Rail Transportation Facilities, and United States Postal Service Transportation Facilities," available at http://water.epa.gov/polwaste/npdes/stormwater/upload/sector_p_transportationfacilities.pdf.

discharging polluted industrial stormwater into navigable waters of the United States without the permit required under Sections 301 and 402 of the CWA.

B. Consolidated Bus is Violating the Clean Water Act by Failing to Apply for NPDES Permit Coverage.

At the Facility Consolidated Bus maintains a fleet of passenger buses. Accordingly, Consolidated Bus is an industrial discharger engaged in passenger transportation under Standard Industrial Classification ("SIC") Group 41, which is an industrial activity included in Sector P of the General Permit.

Pursuant to Section 402(p) of the CWA and regulations promulgated by EPA pursuant to the CWA, Consolidated Bus must apply for coverage under the General Permit or an individual NPDES permit for Consolidated Bus's discharge of polluted stormwater. In addition, Consolidated Bus must apply for an individual NPDES permit if the Facility is discharging process wastewater, or has any other non-stormwater discharge containing pollutants that is not authorized by the General Permit. By failing to apply for coverage under the General Permit or an individual permit, Consolidated Bus is violating CWA Sections 301(a) and 402(a) and (p) and 40 C.F.R. §§ 122.26(c)(1) and (e)(1).¹⁹

To be eligible to discharge under the General Permit, Consolidated Bus must submit to DEC a registration form called a "Notice of Intent."²⁰ Notice of Intent forms are available online from DEC.²¹ To register, Consolidated Bus is required, among other things, to list all stormwater discharges, including descriptions of the industrial activities taking place in the drainage area of each discharge and the acreage of industrial activity exposed to stormwater, the separate storm sewer system or immediate surface water body or wetland to which site runoff discharges, and the name of the watershed and nearest waterbody to which the site ultimately discharges and

¹⁹ Sections 301(a) and 402(a) and (p) make it unlawful for Consolidated Bus to discharge stormwater associated with industrial activity without obtaining a NPDES permit. 40 C.F.R. Sections 122.26(c)(1) and (e)(1) require Consolidated Bus to apply for a NPDES permit that covers Consolidated Bus discharge of stormwater associated with industrial activity.

²⁰ See General Permit, Part I.E.3. In notifying Consolidated Bus that the Clean Water Act requires coverage under and compliance with a valid NPDES permit in order to lawfully discharge, and that submission of a Notice of Intent to DEC is required in order to obtain coverage under the General Permit, Riverkeeper does not concede that all of the activities conducted at the Facility are necessarily eligible for coverage under that permit. For example, if the Facility is discharging process wastewater, such as wash water, or has any other polluted non-stormwater discharge that is not authorized by the General Permit, then an individual NPDES permit is required and the failure to obtain and comply with an individual NPDES permit for such discharges also violates CWA §§ 301(a) and 402(p). The conditions for eligibility to discharge under the General Permit are provided in Part I.C of the permit.

²¹ See http://www.dec.ny.gov/docs/water_pdf/gpnoi.pdf.

information about whether the receiving waters are impaired.²² Consolidated Bus has failed to prepare and file a Notice of Intent or an application for an individual permit.²³

C. Consolidated Bus is Violating the Clean Water Act by Failing to Comply with the General Permit.

As a discharger of stormwater associated with industrial activity, Consolidated Bus must comply at all times with the requirements of the General Permit (or an individual permit).²⁴ By discharging stormwater associated with industrial activity without complying with the General Permit, Consolidated Bus is violating CWA Sections 301(a) and 402(a) and (p).²⁵ The main General Permit requirements that Consolidated Bus has failed and continues to fail to meet are explained further below.

1. Consolidated Bus has not developed and implemented a Stormwater Pollution Prevention Plan.

Before submitting a Notice of Intent, Consolidated Bus must prepare, make available, and implement a Stormwater Pollution Prevention Plan ("SWPPP") in accordance with schedules established in the General Permit.²⁶ The SWPPP must identify potential sources of pollution that may affect the quality of stormwater discharges associated with industrial activity. Further, the SWPPP must describe and ensure the implementation of practices that minimize the discharge of pollutants in these discharges and that assure compliance with the other terms and conditions of the General Permit, including achievement of effluent limitations.²⁷

Among other things, the SWPPP must include: a general site description, a general location map identifying the location of the facility and all receiving waters to which stormwater discharges, information related to a company stormwater pollution prevention team, a summary of potential pollutant sources, a description of control measures and best management practices, and schedules and procedures for implementation of control measures, monitoring and inspections.²⁸

Consolidated Bus has not developed and implemented a legally compliant SWPPP, as required by Part III of the General Permit.²⁹

²² See Division of Water, NY DEC, *Notice of Intent For Stormwater Discharges Associated with Industrial Activity under the State Pollutant Discharge Elimination System (SPDES) Multi-Sector General Permit GP-0-12-001 (MSGP)* (2012), available at: http://www.dec.ny.gov/docs/water_pdf/gpnoi.pdf.

²³ A thorough search of EPA's Enforcement & Compliance History Online ("ECHO") database and DEC's records reveals that no Notice of Intent has been submitted for the Facility.

²⁴ This section discusses the compliance requirements of the General Permit. If Consolidated Bus elects to seek coverage under an individual NPDES permit instead, the conditions of that individual permit will be at least as strict as those of the General Permit, thus Consolidated Bus will still be required to comply with all of the following.

²⁵ Sections 301(a) and 402(a) and (p) make it unlawful for Consolidated Bus to discharge stormwater associated with industrial activity without first complying with all of the conditions established in a NPDES permit.

²⁶ See General Permit Part III.B.

²⁷ See General Permit Part III.A.

²⁸ See General Permit Part III.C.

²⁹ Riverkeeper believes no SWPPP exists. If a SWPPP exists, then it is either facially inadequate or has not been fully and adequately implemented.

2. Consolidated Bus has not implemented control measures and Best Management Practices that meet the best available technology standards.

Consolidated Bus cannot legally discharge stormwater under the General Permit until Consolidated Bus implements mandatory general and sector-specific control measures called Best Management Practices ("BMPs") in order to minimize the discharge of pollutants from the Facility.³⁰ The selected measures must reduce the discharge of pollution from the Facility to the extent practicable through use of the best available technology for the industry.

The General Permit requires that "[t]he owner or operator must select, design, install, and implement control measures (including best management practices)," in accordance with good engineering practices, to meet the effluent limits contained in the permit.³¹ The General Permit's effluent limits include both numeric limits specific to certain sectors,³² as well as non-numeric technology-based effluent limits that apply to all facilities.³³ These non-numeric technology-based restrictions include minimizing the exposure of pollutants to stormwater³⁴ and minimizing the discharge of pollutants in stormwater³⁵ "to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice."³⁶

Consolidated Bus has not minimized the discharge of pollution to the extent achievable by implementing control measures or BMPs that are technologically achievable and economically practicable and achievable in light of best industry practice, as required by Parts I.B.1 and VIII of the General Permit.

3. Consolidated Bus has not conducted routine site inspections and complied with monitoring, recordkeeping, and reporting requirements.

Consolidated Bus must conduct an annual comprehensive site inspection and evaluation of areas where industrial materials or activities are exposed to precipitation or where spills and leaks have occurred within the past three years.³⁷ The inspection must ensure that all stormwater discharges are adequately controlled and that all BMPs are functioning as expected.³⁸ Records of this inspection must be kept for five years.³⁹

³⁰ See General Permit Part I.B.1, see also Part VII (setting forth sector-specific control measures and practices).

³¹ General Permit Part I.B.1.a; see also Part III.C.7 ("The SWPPP must document the location and type of BMPs installed and implemented at the facility to achieve the non-numeric effluent limits in Part I.B.1.a.(2) and where applicable in Part VIII, and the sector specific numeric effluent limitations in Part VIII.").

³² See General Permit, Part VIII.

³³ See General Permit, Part I.B.1.a.2.

³⁴ See General Permit, Part I.B.1.a.2.a.

³⁵ See General Permit, Part I.B.1.a.2.f.

³⁶ General Permit, Part I.B.1.

³⁷ See General Permit, Part IV.A.1

³⁸ See General Permit, Part IV.A.1

³⁹ See General Permit, Part IV.A.2

In addition, qualified facility personnel must carry out routine inspections at least quarterly.⁴⁰ During these inspections, personnel must evaluate conditions and maintenance needs of stormwater management devices, detect leaks and ensure the good condition of containers, evaluate the performance of the existing stormwater BMPs described in the SWPPP, and document any deficiencies in the implementation and/or adequacy of the SWPPP.⁴¹ Such deficiencies must then be addressed through corrective actions.

The General Permit also requires that all covered facilities conduct multiple types of analytical monitoring, and DEC may require additional individualized monitoring as well.⁴² In particular, all facilities authorized under the General Permit must:

- collect and analyze stormwater samples for each outfall at least annually;⁴³
- conduct visual monitoring of stormwater discharges at least quarterly;⁴⁴
- perform an annual dry weather inspection to detect non-stormwater discharges;⁴⁵
- inspect, sample and monitor discharges from coal pile runoff;⁴⁶
- inspect, sample and monitor discharges from secondary containment structures and transfer areas;⁴⁷
- document storm events during which any samples are taken;⁴⁸
- document all of these monitoring activities;⁴⁹
- keep records of the monitoring with the Facility's SWPPP;⁵⁰ and
- submit an annual report to DEC accompanied by a Discharge Monitoring Report detailing the results of any required stormwater samples, as well as reports that documents any instance of non-compliance with benchmarks or numeric effluent limitations.⁵¹

Because Consolidated Bus engages in industrial activities associated with Sector P, sampling is required for:

- Oil & Grease;
- Chemical Oxygen Demand;
- Benzene;
- Ethylbenzene;
- Toluene; and

⁴⁰ See General Permit, Part III.C.7.b.2.

⁴¹ See General Permit, Part III.C.7.b.1 and b.3.

⁴² See General Permit, Part IV.B.3.

⁴³ See General Permit, Part IV.B.1.c (requiring at least annual collection and analysis of stormwater samples). See General Permit, Part IV.B.1.d, .e, .f, and .g for obligations to sample more frequently.

⁴⁴ See General Permit, Part IV.B.1.a.

⁴⁵ See General Permit, Part IV.B.1.b.

⁴⁶ See General Permit, Part IV.B.1.d.

⁴⁷ See General Permit, Part IV.B.1.f.

⁴⁸ See General Permit, Part IV.B.2.c.

⁴⁹ See, e.g., General Permit, Parts IV.B.1.a.8, IV.B.1.b.4, IV.B.1.c.9, see generally Part IV.E.

⁵⁰ See General Permit, Part IV.E.

⁵¹ See General Permit, Part IV.B.1 and 2 and Part IV.C.

- Xylene.⁵²

Riverkeeper is not necessarily aware of all industrial activities taking place at the Facility. To the extent that industrial activities other than the above are carried out at the Facility, other sampling may be required as well.⁵³ This notice provides Consolidated Bus with sufficient information to identify the standards and limitations that apply to all categories of industrial activity.

Consolidated Bus has failed to conduct the required annual and other routine inspections, monitoring, and testing, as required by, at least, Parts III, IV, and VIII of the General Permit.

4. Consolidated Bus has failed to comply with additional requirements located in Part VIII of the General Permit.

As noted above, the General Permit contains various requirements specific to Sector P. These requirements, some of which are referenced above, are collected in Part VIII of the General Permit. They include:

- A requirement to describe and assess in Consolidated Bus's SWPPP the potential for the following to contribute pollutants to stormwater discharges:
 - On-site waste storage or disposal;
 - Dirt/gravel parking areas for vehicles awaiting maintenance; and
 - Fueling areas.
- A requirement that the following areas/activities be included in all inspections:
 - Storage area for vehicles/equipment awaiting maintenance;
 - Fueling areas;
 - Indoor and outdoor vehicle/equipment maintenance areas;
 - Material storage areas;
 - Vehicle/equipment cleaning areas; and
 - Loading/unloading areas.
- A requirement that employee training take place, at a minimum, annually (once per calendar year) and address the following, as applicable:
 - Used oil and spent solvent management;
 - Fueling procedures;
 - General good housekeeping practices;
 - Proper painting procedures; and
 - Used battery management.

⁵² See General Permit, Part VIII, Sector P.

⁵³ See General Permit, Part VIII.

- A requirement that storage of vehicles and equipment awaiting maintenance with actual or potential fluid leaks be confined to designated areas (delineated on the site map). The SWPPP shall document consideration of the following BMPs (or their equivalents):
 - The use of drip pans under vehicles and equipment;
 - Indoor storage of vehicles and equipment;
 - Installation of berms or dikes;
 - Use of absorbents;
 - Roofing or covering storage areas; and
 - Cleaning pavement surface to remove oil and grease.
- A requirement that the SWPPP shall describe and provide for implementation of measures that prevent or minimize contamination of the stormwater runoff from fueling areas. The SWPPP shall document consideration of the following measures (or their equivalents):
 - Covering the fueling area;
 - Using spill/overflow protection and cleanup equipment;
 - Minimizing stormwater run-on/runoff to the fueling area;
 - Using dry cleanup methods; and
 - Treating and/or recycling collected stormwater runoff.
- A requirement that storage vessels of all materials (e.g., for used oil/oil filters, spent solvents, paint wastes, hydraulic fluids) are maintained in good condition, so as to prevent contamination of stormwater, and plainly labelled (e.g., "used oil," "spent solvents," etc.). The SWPPP shall document considerations of the following storage-related BMPs (or their equivalents):
 - Indoor storage of the materials;
 - Installation of berms/dikes around the areas, minimizing runoff of stormwater to the areas;
 - Using dry cleanup methods; and
 - Treating and/or recycling the collected stormwater runoff.
- A requirement that the SWPPP describe and provide for implementation of measures that prevent or minimize contamination of stormwater runoff from all areas used for vehicle/equipment cleaning. The SWPPP shall document considerations of the following BMPs (or their equivalents):
 - Performing all cleaning operations indoors;
 - Covering the cleaning operation;
 - Ensuring that all wash waters drain to a proper collection system (i.e., not the stormwater drainage system unless SPDES permitted); and,
 - Treating and/or recycling the collected stormwater runoff.

- A requirement that the SWPPP describe and provide for implementation of measures that prevent or minimize contamination of the stormwater runoff from all areas used for vehicle/equipment maintenance. The SWPPP shall document consideration of the following BMPs (or their equivalents):
 - Performing maintenance activities indoors; using drip pans;
 - Keeping an organized inventory of materials used in the shop;
 - Draining all parts of fluids prior to disposal;
 - Prohibiting wet clean up practices where the practices would result in the discharge of pollutants to stormwater drainage systems;
 - Using dry cleanup methods;
 - Treating and/or recycling collected stormwater runoff; and
 - Minimizing run-on/runoff of stormwater to maintenance areas.⁵⁴

Consolidated Bus's activities are included in the definition of industrial activity to which the CWA applies. Therefore, Consolidated Bus must obtain coverage under and comply with the requirements of the General Permit, including those specific to Consolidated Bus's industrial activities, as described in Part VIII and outlined above. Consolidated Bus has failed to obtain coverage under the General Permit and comply with these additional requirements.

5. Consolidated Bus is clearly violating the Clean Water Act.

In sum, Consolidated Bus's discharge of stormwater associated with industrial activities without a permit, Consolidated Bus's failure to apply for permit coverage, and Consolidated Bus's failure to comply with the above-listed conditions of the General Permit (or an individual NPDES permit) constitute violations of the General Permit and of Sections 301(a) and 402(p) of the Clean Water Act.

III.

PERSONS RESPONSIBLE FOR ALLEGED VIOLATIONS

Consolidated Bus are the persons, as defined by Section 502(5) of the CWA, responsible for the violations alleged in this Notice. Riverkeeper believes Consolidated Bus has operated the Facility since at least 2012. Consolidated Bus has operational control over the day-to-day industrial activities at this Facility. Therefore, Consolidated Bus is responsible for managing stormwater at the Facility in compliance with the CWA. Riverkeeper hereby puts Consolidated Bus on notice that if Riverkeeper subsequently identify additional persons as also being responsible for the violations set forth above, Riverkeeper intends to include those persons in this action.

⁵⁴ See General Permit, Part VIII, Sector P.

IV.

LOCATION OF THE ALLEGED VIOLATION

The violations alleged in this Notice have occurred and continue to occur at the Facility located at 691 Zerega Ave, Bronx, NY 10473. The waterfront edge of the Facility runs along and discharges directly into Westchester Creek overland. The failure to develop and implement a stormwater pollution prevention plan and take the other required measures are violations occurring at the Facility in general.⁵⁵

V.

DATES OF VIOLATION

Every day upon which Consolidated Bus has failed to apply for permit coverage since Consolidated Bus first commenced operations at the Facility and discharged polluted stormwater is a separate violation of Section 301(a) of the CWA and EPA's regulations implementing the CWA.⁵⁶ These days of violation have continued consecutively since at least 2012.

Additionally, Consolidated Bus has discharged pollution without a permit in violation of Section 301(a) of the CWA on every day since Consolidated Bus commenced operations at the Facility on which there has been a measurable precipitation event or discharge of previously accumulated precipitation (i.e., snowmelt) over 0.1 inches.

Finally, if Consolidated Bus seeks permit coverage after receiving this letter but fails to fully comply with the requirements of the General Permit (or an individual permit), each day upon which Consolidated Bus claims coverage under a NPDES permit but fails to comply with that permit will constitute a separate day of violation with respect to each unmet condition of that permit.

Consolidated Bus is liable for the above-described violations occurring prior to the date of this letter, and for every day after the date of this letter that these violations continue. In addition to the violations set forth above, this Notice covers all violations of the CWA evidenced by information that becomes available to Riverkeeper after the date of this Notice of Intent to File

⁵⁵ The federal courts have held that a reasonably specific indication of the area where violations occurred, such as the name of the facility, is sufficient and that more precise locations need not be included in the notice. *See, e.g., Natural Resources Defense Council v. Southwest Marine, Inc.*, 945 F. Supp. 1330, 1333 (S.D. Cal. 1996), *aff'd* 236 F.3d 985, 996 (9th Cir. 2000); *City of New York v. Anglebrook Ltd. Partnership*, 891 F. Supp. 900, 908 (S.D.N.Y. 1995); *United Anglers v. Kaiser Sand & Gravel Co.*, No. C 95-2066 CW, 1995 U.S. Dist. LEXIS 22449 at *4 (N.D. Cal. Sept. 27, 1995).

⁵⁶ *See also* 33 U.S.C. §§ 402(p)(3)(A) and (p)(4)(A) (requiring the establishment of industrial stormwater NPDES permits and of a permit application process).

Suit.⁵⁷ These violations are ongoing, and barring full compliance with the permitting requirements of the Clean Water Act, these violations will continue.

VI.

RELIEF REQUESTED

Riverkeeper will ask the court to order Consolidated Bus to comply with the Clean Water Act, to pay penalties, and to pay Riverkeeper's costs and legal fees.

First, Riverkeeper will seek declaratory relief and injunctive relief to prevent further violations of the Clean Water Act pursuant to Sections 505(a) and (d) and such other relief as permitted by law. Riverkeeper will seek an order from the Court requiring Consolidated Bus to obtain NPDES permit coverage and to correct all other identified violations through direct implementation of control measures and demonstration of full regulatory compliance.

Second, pursuant to Section 309(d) of the CWA,⁵⁸ each separate violation of the CWA subjects Consolidated Bus to a penalty not to exceed \$52,414 per day for each violation.⁵⁹ Riverkeeper will seek the full penalties allowed by law.

Third and lastly, pursuant to Section 505(d) of the CWA, Riverkeeper will seek recovery of its litigation fees and costs (including reasonable attorney and expert witness fees) associated with this matter.

VII.

PERSONS GIVING NOTICE

The full name, address, and telephone number of the persons giving notice are as follows:

Riverkeeper, Inc.
20 Secor Road
Ossining, NY 10562
(914) 478-4501 x 224
Attn.: Sean Dixon

⁵⁷ See, e.g. *Public Interest Research Grp. v. Hercules, Inc.*, 50 F.3d 1239, 1248-49 (3d Cir.1995) (a notice that adequately identifies specific violations to a potential defendant also covers repeated and related violations that the plaintiff learns of later. "For example, if a permit holder has discharged pollutant 'x' in excess of the permitted effluent limit five times in a month but the citizen has learned only of four violations, the citizen will give notice of the four violations of which the citizen then has knowledge but should be able to include the fifth violation in the suit when it is discovered.").

⁵⁸ 33 U.S.C. § 1319(d); see also 40 C.F.R. § 19.4 (Adjustment of Civil Monetary Penalties for Inflation).

⁵⁹ 40 C.F.R. § 19.2.

VIII.

IDENTIFICATION OF COUNSEL

Riverkeeper is represented by legal counsel in this matter. The name, address, and telephone number of Riverkeeper's attorneys are:

Edan Rotenberg, Esq.
Michael DiGiulio, Esq.
Super Law Group, LLC
180 Maiden Lane; Suite 603
New York, New York, 10038
(212) 242-2355

IX.

CONCLUSION

The foregoing provides more than sufficient information to permit Consolidated Bus to identify the specific standard, limitation, or order alleged to have been violated, the activity alleged to constitute a violation, the person or persons responsible for the alleged violation, the location of the alleged violation, the date or dates of such violation, and the full name, address, and telephone number of the person giving notice.⁶⁰

If Consolidated Bus has developed a SWPPP, Riverkeeper requests that Consolidated Bus send a copy to the undersigned attorney.⁶¹ Otherwise, Riverkeeper encourages Consolidated Bus to begin developing a SWPPP immediately after receiving this letter and ask that Consolidated Bus please inform the undersigned attorney of Consolidated Bus's efforts so that Riverkeeper can work with Consolidated Bus to avoid disputes over the contents of the SWPPP.⁶²

⁶⁰ 40 C.F.R. § 135.3(a).

⁶¹ Note that under Part III.D.2 of the General Permit, the owner or operator of a facility "must make a copy of the SWPPP available to the public within 14 days of receipt of a written request."

⁶² Riverkeeper will not send a new notice letter in response to any effort Consolidated Bus makes to come into compliance with the Clean Water Act after receiving this letter, for example, by developing a SWPPP. The federal courts have held that citizens sending a notice letter are not required to identify inadequacies in compliance documents that do not yet exist and are "not required to send a second notice letter in order to pursue specific claims regarding the inadequacies of Consolidated Bus's post-notice compliance efforts." *WaterKeepers N. Cal. v. AG Indus. Affg.*, 375 F.3d 913, 920 (9th Cir. 2004). See also *Natural Resources Defense Council v. Southwest Marine, Inc.*, 236 F.3d 985, 997 (9th Cir. 2000) ("subject matter jurisdiction is established by providing a notice that is adequate on the date it is given to the defendant. The defendant's later changes . . . do not retroactively divest a district court of jurisdiction under 33 U.S.C. § 1365(b)."); *City of New York v. Anglebrook L.P.*, 891 F. Supp. 900, 908 (S.D.N.Y. 1995) (plaintiff's notice letter based on inadequacies of defendant's original SWPPP held sufficient to establish court's jurisdiction, even though defendant later prepared a revised SWPPP).

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During the sixty-day notice period, Riverkeeper is willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of protracted litigation. If Consolidated Bus wishes to pursue such discussions, please contact the undersigned attorney immediately so that negotiations may be completed before the end of the sixty-day notice period. We do not intend to delay the filing of a complaint in federal court, regardless of whether discussions are continuing at the conclusion of the sixty days.

Sincerely,



Michael DiGiulio, Esq.
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cc:

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